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16 UNITED STATES DISTRICT COURT
17 DISTRICT OF NEVADA
18

19 TETSUYA NAKAMURA,

20 Plaintiff,

21 v.

22 SUNDAY GROUP INCORPORATED, SGI
TRUST, TOSHIKI (TODD) MITSUISHI,
23 JAMES PACK and JOHN DOES 1-10,

24 Defendants.
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Case No.: 2:22-cv-01324-MMD-EJY

**REQUEST FOR JUDICIAL NOTICE
AND NOTICE OF DOCUMENT
INCORPORATED BY REFERENCE IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS THE
COMPLAINT**

Dr. Tetsuya Nakamura (“Plaintiff”) hereby requests that the Court take judicial notice of or otherwise consider the documents attached as Exhibits A and B to the accompanying Declaration of Felix S. Lee in Opposition to Defendants’ Motion to Dismiss the Complaint (the “Lee Declaration”), pursuant to Federal Rule of Evidence 201. The documents to be considered are as follows:

1. A certified English translation of the Japanese-language Memorandum of Understanding to Participate in Private Sale dated November 28, 2017 (the “Mobby MOU”), entered into by Plaintiff and Defendant Sunday Group Incorporated (“Sunday Group”), a true and correct copy of which is attached as **Exhibit A** to the Lee Declaration.

2. A copy of the Series AA Preferred Stock Subscription Agreement dated April 19, 2015, entered into by Plaintiff and Sunday Group, a true and correct copy of which is attached as **Exhibit B** to the Lee Declaration.

I. A CERTIFIED ENGLISH TRANSLATION OF A FOREIGN LANGUAGE DOCUMENT IS JUDICIALLY NOTICEABLE

Federal Rule of Evidence 201(b) permits a court to take judicial notice of any fact that is not subject to reasonable dispute because it: “(1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Courts within the Ninth Circuit, and elsewhere, routinely take judicial notice of certified English translations of foreign-language documents. *See, e.g., GeoVector Corp. v. Samsung Elec. Co.*, 234 F. Supp. 3d 1009, 1016 n.2 (N.D. Cal. 2017) (taking judicial notice of certified translation of patent application); *Garcia v. Guo*, 2016 WL 102213, at *11 (C.D. Cal. Jan. 7, 2016) (“In general, courts have taken judicial notice of certified translations of material relied upon by the Complaint . . . in situations where the authenticity of the document is not at issue.”) (internal quotation marks and citation omitted); *Grolsche Bierbrouwerij Nederland, B.V. v. DoveBid, Inc.*, 2011 WL 3359913, at *2 n.3 (N.D. Cal. Aug. 2, 2011) (taking judicial notice of certified translation of contract).

Exhibit A to the Lee Declaration is an English translation of the Mobby MOU, which provided for the private sale of cryptocurrency tokens associated with the “Mobby Project” that

1 Sunday Group claimed to be developing, and which Plaintiff and Sunday Group entered based on
2 Sunday Group's misrepresentations about the project. Complaint ¶¶ 25-28. Exhibit A includes a
3 notarized certification from a Japanese translator affiliated with the well-known and widely-used
4 translation company, TransPerfect Legal Solutions. Unlike the uncertified translation Defendants
5 have submitted, which includes no information about who translated the document and under
6 what circumstances, Plaintiff's certified translation is properly the subject of judicial notice under
7 the aforementioned authorities. At a very minimum, Plaintiff's certified translation creates an
8 evidentiary issue regarding the forum selection clause in the Mobby MOU which is unfit for
9 resolution on a motion to dismiss.

10 **II. THE SERIES AA AGREEMENT IS INCORPORATED BY REFERENCE IN THE** 11 **COMPLAINT**

12 A court evaluating a motion to dismiss also may consider documents incorporated by
13 reference in the complaint whose authenticity no party questions. *United States v. Ritchie*, 342
14 F.3d 903, 908 (9th Cir. 2003); *see also Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)
15 ("Under the incorporation by reference doctrine, we may consider documents whose contents are
16 alleged in a complaint and whose authenticity no party questions") (internal quotation marks
17 and citation omitted). Plaintiff references the Subscription Agreement and its contents throughout
18 the Complaint. Defendants do the same in briefing concerning the timeliness of claims arising
19 from the Subscription Agreement, demonstrating that the authenticity of the agreement is not in
20 dispute. As such, the Court can consider the Subscription Agreement to be incorporated by
21 reference within the Complaint, and the Court should consider its contents in evaluating the
22 instant motion.

23 For the reasons set forth above, Plaintiff respectfully requests that the Court consider
24 **Exhibits A and B** to the Lee Declaration.

1 Respectfully submitted,
2 Dated: December 2, 2022 FENWICK & WEST LLP
3

4 By: /s/ Felix S. lee
5 Felix S. Lee
6 Christopher J. Steskal
7 Casey T. O'Neill
8 Claire Mena

9 *and*

10 Dated: December 2, 2022 FENNEMORE CRAIG, P.C.
11

12 By: /s/ John D. Tennert
13 John D. Tennert III (Nevada Bar No. 11728)
14 Wade Beavers (Nevada Bar No. 13451)

15 Attorneys for Plaintiff
16 TETSUYA NAKAMURA

17 **CERTIFICATE OF SERVICE**
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19 I hereby certify that on this 2nd day of December 2022, a true and correct copy of the
20 foregoing was filed with the Clerk of the Court using the CM/ECF system, which provided
21 electronic service to all counsel of record.
22

23 /s/ John D. Tennert
24 John D. Tennert III
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